IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 89 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VADODARA DISTRICT PANCHAYAT - Petitioner(s)

Versus

JAYANTIBHAI KOYJIBHAI RATHWA - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
MR MUKUL SINHA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/09/2005

ORAL JUDGMENT

1. In the present petition, the petitioner employer has challenged the legality of the award dated 2/9/2000 passed by the Labour Court, Vadodara. By the impugned

award the termination of the respondent workman was set aside. He was directed to be reinstated in service with continuity, however with 35% back wages for the intervening period.

2. While admitting the petition on 10/1/2001 learned Single Judge had stayed only the directions regarding back wages contained in the award. The learned advocate Mr. Munshaw appearing for the petitioner stated that the workman has since been reinstated in service.

3. In the award of the Labour Court, the Labour Court has come to the conclusion that the workman had worked for 236 days in 1988-89 and 105 in 1989-90. His services were terminated on 26/2/1990. The Labour Court, therefore, came to the conclusion that the workman had worked for more than 240 days during the relevant period. Considering the fact that no retrenchment compensation was offered nor notice or notice pay given to the workman before his termination. The Labour Court found that the termination was illegal. There is no dispute about the fact that requirement of Section 25 F of the Industrial Disputes Act were not followed before terminating the service of the respondent. In view of this factual back-

ground, I do not see that the Labour Court erred in setting aside the termination of the workman. Direction for reinstatement with continuity therefore cannot be faulted.

4. With respect to back wages the Labour Court noted that the workman in his deposition has stated that the workman is doing labour work in fields and is receiving Rs. 15 to 20/- daily wage. The Labour Court, therefore, noted that the workman was gainfully employed. Considering this Labour Court found appropriate to grant 35% back wages in favour of the respondent. The workman does not appear to have stated that he does not get work on regular basis. When he has admitted to be receiving daily wages of Rs.15 to 20/- during the period of lay off and when at the relevant time the rate of daily wage payment by the petitioner was Rs.26/- per day, direction for payment of 35% back wages appears to be some what on the higher side. Considering the facts and circumstances of the case the direction for payment of back wages of 35% is modified and the respondent workman is held entitled to receive 25% back wages for the entire intervening period. To the above extend the award of the Labour Court is modified. Rest of the award is

maintained. It is excepted that back wages be paid preferably within a period of three months from the date of receipt of a copy of this order. Petition is allowed to the above extent. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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